UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA PLEBANI, Plaintiff v. BUCKS COUNTY RESCUE EMERGENCY MEDICAL SERVICES, Defendant	CIVIL ACTION No. 03-5816

MICHAEL PLEBANI, Plaintiff v. BUCKS COUNTY RESCUE EMERGENCY MEDICAL SERVICES, Defendant	CIVIL ACTION No. 03-6225

Pollak, J. November 27, 2007

OPINION

In these consolidated cases, plaintiffs Lisa Plebani and her father Michael Plebani seek to redress alleged sexual harassment of Ms. Plebani and related discrimination and

retaliation against both Plebanis by their former employer, defendant Bucks County Rescue Emergency Medical Services ("the Squad" or "BCRS").[1] The Plebanis both allege violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq*.; intentional discrimination, *see id*. § 1981a; and violations of the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. §§ 959 *et seq*. Ms. Plebani also alleges a violation of the Equal Pay Act, 29 U.S.C. § 206(d). In its counterclaim, defendant seeks to compel arbitration of plaintiffs' claims under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*., and equivalent Pennsylvania law on the ground that plaintiffs are bound by a mandatory arbitration provision set forth in the Squad's employee handbook. Plaintiffs dispute the existence of enforceable arbitration agreements with the Squad. After denying the Squad's motion for summary judgment on the counterclaim, and in accordance with the Federal Arbitration Act, *id*. § 4, the court held a two-day hearing to resolve whether enforceable arbitration agreements exist between the Squad and the plaintiffs. For the reasons stated below, the court finds that no enforceable agreement exists between the Squad and either of the plaintiffs.

I.

The court finds the following facts (the facts are undisputed except where noted to the contrary):

The Squad is a volunteer ambulance service. It is staffed by paramedics and

[1] The caption of this case notwithstanding, it appears that the Squad is generally known as the Bucks County Rescue Squad, hence "BCRS."

emergency medical technicians ("EMTs"), of whom some are volunteers and others are paid employees.[2] The Squad's leadership is almost entirely made up of volunteers, including the chief, president, vice-president, and members of the Employee Relations Committee ("ERC") and the Board of Directors. However, the Squad does pay an operations manager to supervise the Squad on a daily basis. Orienting new employees is among the operations manager's various responsibilities. Tr. 66.[3] The operations manager reports to the ERC and is overseen by the volunteer leadership. *See* Tr. 93-94; Def.'s Exh. 27.

During the Plebanis' tenure with the Squad, the volunteer leadership included Kathryn and Harry Crohe, both of whom were called as witnesses by the Squad.[4] Kathryn Crohe, a volunteer of more than eighteen years, was the Squad's vice-president. Tr. 44; Tx. 26. Harry Crohe, a Squad volunteer of more than forty years, was chairman of the ERC. Tr. 78, 93. In his words, during the Plebanis' employment, he was the "overseer of the Plebanis" and "was responsible to make sure that everything . . . would happen that

[2] Hereinafter, the words "employee," "employed," and "employment" refer exclusively to paid employment with the Squad, as opposed to work done by volunteers. The distinction is relevant because the employee handbook at the center of this case only governs paid employees.

[3] "Tr." refers to the transcript of the first day of testimony, and "Tx." to the second.

[4] The Squad also called as witnesses Arlene Angelo, the Squad's labor and employment counsel, and Victoria Knapp and Joseph Barbagallo, both Squad volunteers. Plaintiffs testified and called as a witness Christopher Czepiel, a former Squad employee.

was supposed to happen, such as the scheduling." Tr. 83-84.[5]

At the time the Plebanis were hired, the Squad had an employee handbook. The handbook only applied to paid employees, not volunteers; the volunteers had a different handbook. Tr. 117-18, 124. The first page of the employee handbook states that the handbook's policies "are to be considered as guidelines" and that the Squad "at its option, may change, delete, suspend or discontinue any part or parts of the policies in this Employee Manual at any time without prior notice as business, employment legislation and economic conditions dictate." The handbook appears to have been drafted in the late 1990s. *See* Handbook 29 (describing the Squad's retirement plan "as of 01/01/99").

The handbook sets forth the Squad's arbitration policy, reproduced in full in the margin.[6] The arbitration policy begins: "If an employment dispute arises while you are

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[5] Harry Crohe is the brother of Donnie Crohe, who was president of the Squad during the Plebanis' employment. *See* Tr. 44. Donnie Crohe is the person alleged to have harassed Lisa Plebani. He did not testify at the hearing.

[6] The section of the handbook titled "Arbitration Policy" states, in its entirety:

> If an employment dispute arises while you are employed at BCRS, BCRS requests that you agree to submit any such dispute arising out of your employment or the termination of your employment (including, but not limited to, claims of unlawful termination based on race, sex, age, national origin, disability, breach of contract, or any other bias prohibited by law) exclusively to binding arbitration under the Federal Arbitration Act, 9 U.S.C., Section 1. Similarly, any disputes arising during your employment involving claims of unlawful discrimination or harassment under federal or state statutes shall be submitted exclusively to binding arbitration under the above provisions. This arbitration shall be the exclusive means of resolving any dispute arising out of your employment or termination from employment by BCRS or you, and no other action can be brought by employees in any court or any forum.
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> By simply accepting or continuing employment with BCRS, you

employed at BCRS, BCRS requests that you agree to submit any such dispute . . . exclusively to binding arbitration under the Federal Arbitration Act, 9 U.S.C., Section 1." Handbook 6. The policy goes on to state that "[b]y simply accepting or continuing employment with BCRS, you automatically agree that arbitration is the exclusive remedy for all disputes arising out of or relating to your employment with BCRS and you agree to waive all rights to a civil court action regarding your employment and the termination of your employment with BCRS; only the arbitrator, and not a judge nor a jury, will decide the dispute." *Id*. Page 48 of the handbook consists of a form titled "Acknowledgment of and Agreement with BCRS Arbitration Policy." The form has a space for the signature of

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> automatically agree that arbitration is the exclusive remedy for all disputes arising out of or relating to your employment with BCRS and you agree to waive all rights to a civil court action regarding your employment and a termination of your employment with BCRS; only the arbitrator, and not a judge nor a jury, will decide the dispute.
>
> If you decide to dispute your termination or any other alleged incident during your employment, including but not limited to unlawful discrimination or harassment, you must deliver a written request for arbitration to BCRS within one (1) year from the date of termination, or one (1) year from the date on which the alleged incident(s) or conduct occurred, and respond within fourteen (14) calendar days to each communication regarding this election of an arbitrator and the scheduling of a hearing. If BCRS does not receive a written request for arbitration from you within one (1) year, or if you do not respond to any communication from BCRS about the arbitration proceedings within fourteen (14) calendar days, you will have waived any right to raise any claims arising out of the termination of your employment with BCRS, or involving claims of unlawful discrimination or harassment in arbitration and in any court or other forum.
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> You and BCRS shall each bear a respective cost for legal representation at any such arbitration. The cost of the arbitrator, and court report, if any, shall be shared equally by the parties.

Handbook 6.

a supervisor as well as the employee. Page 49 of the handbook, the handbook's last page, is a form titled "Receipt and Acknowledgment of Bucks County Rescue Squad Employee Manual."

Neither Lisa nor Michael Plebani signed the forms acknowledging receipt of the handbook and agreeing to the arbitration policy.

Lisa Plebani, who had previously been a Squad volunteer, became a paid EMT in July 2000, and later in 2000 became a paid paramedic. Tx. 110; Def. Exh. 31 at 7-8. Before or during her employment as a paramedic, the operations manager resigned, and an acting supervisor was appointed. That acting supervisor asked Lisa Plebani to take on the task of scheduling shifts for the Squad. When the acting supervisor himself left the Squad, Lisa Plebani was asked to serve as acting supervisor. After her father was hired as the new operations manager, she took on the title of administrative assistant. Tx. 113. Her title was later changed to assistant operations manager. She remained in that paid position until approximately December 2002. Tx. 111. The court credits Lisa Plebani's uncontradicted testimony that she (1) was not given any sort of formal employee orientation upon commencing paid employment with the Squad; (2) did not at that time receive a copy of the handbook; (3) did not have a copy of the handbook until she became the Squad's administrative assistant in 2001; and (4) did not ever read the handbook's arbitration policy until after the Squad terminated her employment in January 2003. Tx. 111-14.

Michael Plebani, Lisa's father, worked at the Squad from approximately 1979 through 1983 in both paid and volunteer positions, eventually serving as Squad chief. Tx. 62. He left the Squad in 1983 to work for the Philadelphia Fire Department. Tx. 62. Upon his retirement from the Fire Department, he returned to the Squad as its operations manager in May 2001. Tx. 62-63; Def.'s Exh. 30 at 6.[7] He served as operations manager until the Squad terminated his employment in December 2002. Tx. 69.

When Michael Plebani began his employment as operations manager in May 2001, the prior operations manager — who was responsible for orienting new employees — had already left the post. Tr. 66. Although there is conflicting testimony over whether Harry Crohe handed Michael Plebani a copy of the employee handbook (as Crohe testified, Tr. 113), or whether Michael Plebani himself assembled a copy of the handbook from "bits and pieces" scattered about the office (as both Plebanis testified, Tx. 67-68, 122-23), it is undisputed that no one discussed the policies in the handbook with Michael Plebani upon his being hired. Kathryn Crohe could not recall Michael Plebani receiving an employee orientation. Tr. 67. Harry Crohe testified that he handed Michael Plebani keys to the

[7] The court notes that the record contains a Department of Justice I-9 Employment Eligibility Verification form for employment with the Bucks County Rescue Squad for Michael Plebani dated February 3, 2000, and a Bucks County Rescue Squad W-4 for Michael Plebani dated February 16, 1999. Def.'s Exhs. 28-29. Nothing in the record illuminates the purposes, if any, served by these forms, which predate Michael Plebani's tenure as operations manager. The forms were entered into evidence by the Squad as exemplars of Michael Plebani's signature, for reasons discussed further below. The court therefore accepts the uncontradicted testimony of Michael Plebani that his post-1983 employment with the Squad did not commence until he became operations manager in May 2001.

building and a copy of the employee handbook, but did not "go over it with him," did not explain any policies in it, and did not ask him to sign its last two pages. Tr. 113-14, 117. He also testified that, when the Plebanis were hired, there was no procedure in place for the orientation of management employees. Tr. 124-25.

The copy of the handbook provided to the court supports the Plebanis' testimony that Michael Plebani assembled the handbook from at least two pieces, and the court therefore credits that testimony. Most of the handbook's pages are numbered. The page that should be number 31 is missing. That page, according to the table of contents, addresses paid leave. In place of page 31 are four unnumbered pages, in a different font and with different formatting than the rest of the handbook. These inserted pages begin with the heading: "Master Copy: all accruements will start April 16th 2001." The four pages address numerous policies governing everyday practice, including vacation time, sick time, the sick leave bonus, personal days, holidays, and a list of various "additional benefits" (including, *inter alia*, uniforms, medical benefits, life insurance, and retirement fund contributions). These are the sections of the handbook that Lisa Plebani frequently consulted in her administrative duties. Tx. 115-16. Following the four inserted pages is a page in the handbook's standard font which is unnumbered but which appears to have been the thirty-second page of the handbook prior to the inclusion of the four inserted pages.[8] For ease of reference, the page is hereinafter denominated "page 32." Page 32 has

[8] The page addresses the topics listed for page 32 in the table of contents. The court concludes that the lack of a page number is owing to a photocopying error; some other pages in

been altered with a pen to reflect a reduction in the number of "paid holidays" recognized by the Squad. Even in its edited form, however, the list of holidays on page 32 does not precisely match the list of paid holidays on the third inserted page; only the list on page 32 includes Christmas Eve. The court credits Lisa Plebani's testimony that, after her father put together the pieces of the handbook, she made photocopies and placed them in binders for distribution to employees. Tx. 122-23.

The Squad has found signed copies of the acknowledgment forms appearing on pages 48 and 49 of the handbook for only two employees. *See* Tr. 97; Tx. 9. One employee's hire predates the Plebanis' tenure: Christopher Czepiel, a former Squad employee, identified his own signature on a form titled "Receipt and Acknowledgment of Bucks County Rescue Squad Employee Manual" dated the day he was hired in 1999. Tx. 46. Czepiel testified that the form was given to him by Fred Mueller, the operations manager at the time Czepiel was hired. Tx. 47.

The second set of forms was signed during the Plebanis' tenure. Robert Mitchell, a Squad employee who was hired in November 2001, identified his signature on both the arbitration and handbook receipt forms signed the date he was hired. Tr. 133-34.[9] He

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the handbook also have no, or only partial, numbers. *See infra* n.11.

[9] The court notes that plaintiffs' counsel, in post-trial briefing, asserts that Mitchell failed to identify his own signature on exhibit 24, the arbitration form. *See* Pl.'s Prop. Find. Fact & Law 10 (Docket No. 26) ("Mr. Mitchell, however, could not identify the signature on Defendant's Exhibit 24 as his own . . . ."). Counsel's assertion finds no support in Mitchell's testimony. In that testimony Mitchell, without equivocation, identified the signature on exhibit 24 as his own:

testified that Lisa Plebani gave him the forms among many forms he signed when he first became a Squad employee. Tr. 134.[10] Lisa Plebani testified that she did not know the

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Q: . . . The previous witness, Mr. Crohe, was shown a copy of Defendant's Exhibit 24, which is a document you signed that purports to contain Mr. Plebani's signature. Is that in front of you?
A: Yes.
Q: Okay. Can you identify that document for me?
A: That is an acknowledgment of an agreement with Bucks County Rescue Squad, Arbitration Policy.
Q: Okay. And there's an employee signature on it.
A: Yes.
Q: Whose signature is that?
A: That's mine.
Q: And there's an employee named [sic] printed on it?
A: Yes.
Q: Is that your name?
A: Yes it is.
Q: Okay.
A: Yes.
Q: Is that your handwriting where it says "Employee Signature and Employee Name"?
A: Yes.
Q: Now, there's also a date on it, 11/1/01?
A: Yes.
Q: To your knowledge or recollection, is that your handwriting?
A: I believe it is. I'm not positive. That's my handwriting for a date.

Tr. 133-34.

[10] The supervisor signature on Mitchell's arbitration form appears to be a scrawled "M" or "W." Tr. 135; *see* Def.'s Exh. 24. John W. Russell, Sr., a longtime Squad volunteer who testified to having seen Michael Plebani's signature numerous times, identified the signature as Michael Plebani's. Tr. 152. Michael Plebani denied the signature was his own, stating that he always began the letter M with a loop on the "inside" of the M. Tx. 79. (An "inside" loop is a loop that appears to be drawn clockwise.) The signature on the Mitchell form, however, is an M beginning with a loop on the outside of the M — that is, a loop drawn counterclockwise. Tx. 79. Michael Plebani's testimony is supported by six of the seven exemplars of his signature submitted as exhibits by the Squad, each of which has an "inside" loop; the seventh exemplar has a loop of such narrowness that the court cannot see whether it is an "inside" or "outside" loop. *See* Def.'s Exhs. 18-22, 28-29, 32. For reasons discussed below, the court finds itself able to decide the contractual question presented without resolving who signed the "M."

forms existed in the handbook, but that she did routinely hand out handbooks to new employees and dealt with their paperwork. Tx. 118, 124-25. The court credits Mitchell's testimony that Lisa Plebani gave him the forms to sign.

At the time that Michael Plebani was hired as the Squad's operations manager in May 2001, a union organizing effort had begun among Squad employees. Tr. 6. In July 2001, the union won an National Labor Relations Board election. Tr. 7. In the subsequent contract negotiations, attorney Arlene Angelo represented Bucks County, of which the Squad is an agency. Tr. 6. Michael Plebani sat at the negotiating table on behalf of Bucks County alongside Angelo and a member of the Squad's volunteer leadership, and occasionally Lisa Plebani substituted for her father in that role. Tr. 8-9. Angelo testified that, in a meeting following the union's victory, she informed Michael Plebani and members of the Squad's volunteer leadership that, under the National Labor Relations Act, the terms and conditions of employment that were in effect at the time of the election had to remain in effect until other terms and conditions were negotiated with the union. Tr. 11. Negotiations were still ongoing when the Squad terminated the Plebanis' employment. Tr. 7; *cf*. Tr. 12 (contract reached in the spring of 2003).

Sometime after beginning his job as Squad operations manager, in 2001, Michael Plebani proposed the creation of a new Squad "disciplinary committee." Tx. 27, 69-70. He testified that he suggested forming the committee in anticipation of the grievance system that would be implemented under the union contract (then still being negotiated).

He contemplated that the grievance system under the contract would have "at least, two to three levels [of discipline] before it would go to the arbitration policy that the union was going to negotiate": He, Michael Plebani, would serve as the "first finder of discipline," and the second level would consist of a disciplinary committee. Tx. 70. He "went to the ERC [Employee Relations Committee] and recommended that they develop a disciplinary committee" immediately, to lay the groundwork for the anticipated disciplinary structure under the contract. Tx. 70. The ERC approved the formation of the new disciplinary committee, and the committee came into being in 2001, while contract negotiations with the union were still ongoing. Tx. 70; *see* Def.'s Exh. 9 (November 2001 memorandum to the disciplinary committee).

Michael Plebani's account largely accords with Kathryn Crohe's account of the events; her understanding was that Michael Plebani thought having "a group of people to hear grievances" would "replace any arbitration problems that we would have." Tr. 46. Harry Crohe likewise testified that Michael Plebani set up the committee so that grievances would be resolved within the Squad rather than going to the NLRB. Tr. 73. Victoria Knapp, a Squad volunteer who served the new disciplinary committee, recalled Kathryn Crohe telling her that "Mike [Plebani] had said to formulate the committee so that it would take the place of the arbitration clause in the manual." Tx. 17.

Disciplinary charges against employees were brought to the new disciplinary committee by Michael Plebani in the form of a formal memorandum describing the

incident and identifying the standard of conduct set out in the employee handbook that the employee had allegedly breached; the committee would interview both Michael Plebani and the employee; and then the committee would determine the discipline to be dispensed. Tx. 18-24. The committee heard between five and ten cases during Michael Plebani's tenure as operations manager. Tx. 21. All witnesses agreed that Michael Plebani knew the standards of conduct from the employee handbook extremely well and would frequently refer to those provisions' precise wording and the page numbers on which the provisions appeared. *See*, *e.g.*, Tr. 130, 149; Tx. 24, 37-38; *see also* Handbook 11-12 ("Standards of Conduct" consisting of twenty-seven enumerated "unacceptable activities"). Neither the standards of conduct nor the two following pages, concerning disciplinary procedures, mention the possibility of arbitration or the arbitration policy. *See* Handbook 11-14.[11]

The arbitration policy was not a handbook provision to which Michael Plebani — or anyone on the Squad — frequently referred. Knapp, a member of the disciplinary committee, could not recall any reference to arbitration during a disciplinary proceeding. Tx. 29. Joseph Barbagallo, a volunteer and member of the ERC, testified that, although various handbook provisions were discussed in ERC meetings in Plebani's presence — for instance, those regarding "uniforms . . . , holidays, vacation times, sick times" — he could

[11] The pages that appear to be pages 12 and 14 of the handbook lack page numbers. For the same reasons given above, *see supra* n.8, the court finds that the pages are indeed pages 12 and 14 of the original handbook.

not recall the handbook's arbitration provision ever having being mentioned. Tx. 38. Indeed, at the time, Barbagallo was not aware that such a provision existed. Tx. 38. He became aware of the provision only after Michael Plebani's termination, when Barbagallo became Squad chief and received a copy of the handbook for the first time. Tx. 39. Thereafter, it was Barbagallo's understanding that the arbitration policy was "a provision for the employees to go to arbitration if they wanted to." Tx. 40. Harry Crohe likewise testified that it was — and remained — his understanding that, under the handbook's arbitration policy, it was "up to [an employee]" to request arbitration. Tr. 123.

It is undisputed that certain policies in the employee handbook had been entirely abandoned — if they had ever been followed — during the Plebanis' tenure. The handbook has a subsection titled "Performance and Compensation Reviews." Under the heading "Performance Reviews," the handbook states that "BCRS conducts a formal review one time per year for each employee." Handbook 24. The following section on "Compensation Reviews" provides that "BCRS's compensation reviews are usually given with performance reviews." Handbook 24. However, Harry Crohe and Lisa Plebani agreed that the Squad did not conduct performance or compensation reviews. Tr. 119; Tx. 117. The handbook also states in the section titled "How You Were Selected": "Prior to becoming an employee of BCRS, a job-related background check was conducted." However, Crohe and Lisa Plebani also agreed that the Squad did not perform background

checks of employees. Tr. 118; Tx. 117.[12] It is also undisputed that no employee had ever requested arbitration under the handbook's policy, and that the Squad had never previously demanded that an employee submit a claim to arbitration. *See* Tr. 122.

There was conflicting testimony over whether the Squad's labor counsel, Arlene Angelo, told Michael Plebani and others that the employee handbook was "obsolete." Michael Plebani testified that Angelo told him that the employee handbook was "obsolete" when he inquired about using a certain provision as the basis for disciplining an employee: "She goes, this thing is obsolete. A lot of these things are obsolete. You can't use that. So, we had to really watch what we were doing. That's why, from that point on, if I was going to either suspend or have somebody terminated – recommendation for termination, I had to check with her first." Tx. 75-76. Christopher Czepiel also testified that Angelo said the handbook was "obsolete" during union negotiations; Czepiel was president of the union when he was terminated in 2002. Tx. 41, 44. Angelo confirmed that Michael Plebani called her frequently for advice, but denied saying that the handbook was "obsolete" following the union election; she stated that so advising her client would have been unlawful, given that the Squad could not unilaterally change the terms and conditions of employment during contract negotiations. Tr. 12, 15. It appears to the court unlikely

[12] Crohe and Lisa Plebani also testified that the Squad did not provide health examinations or vaccinations of employees, and did not conduct exit interviews. Tr. 118-19; Tx. 117. The court notes, however, that these policies are not described in the handbook unequivocally. *See* Handbook 10 ("reserv[ing] the right to require . . . a health examination" and stating that the Squad would "endeavor to provide relevant vaccinations"); *id*. at 24 (stating that "management would like to conduct an exit interview" upon termination).

that an experienced labor lawyer would advise her client to scrap its policies during negotiations. The court concludes that a misunderstanding arose because, to the extent that any handbook provisions were not enforced prior to the union election, and thus were not part of the terms and conditions of the Squad's employees' employment, such provisions could not have been unilaterally — and newly — enforced following the election. The court finds that resolving whether Angelo actually called the handbook "obsolete" is unnecessary to its decision.

Michael Plebani testified that, although he was aware that the handbook contained an arbitration policy, he never read it. Tx. 73. The court credits this testimony, which is supported by the evidence that (1) Michael Plebani was never given an employee orientation in which the policy was explained; (2) he was never asked to sign the form agreeing to the arbitration policy; (3) rightly or wrongly, he believed the handbook was largely obsolete; (4) in carrying out his disciplinary responsibilities by writing memoranda and reporting to the volunteer leadership, he primarily made use of two pages of the handbook — pages 11 and 12, setting out the standards of "unacceptable" conduct — which do not mention arbitration or the arbitration policy; (5) the arbitration policy was not frequently, if ever, discussed among the Squad's leadership; and (6) at least one member of the Squad's leadership was not even aware that any arbitration policy existed.

II.

"[A]rbitration is a creature of contract law." *E.I. DuPont de Nemours & Co. v.*

Rhone Poulenc Fiber & Resin Intermediates, S.A.S., 269 F.3d 187, 195 (3d Cir. 2001). As such, "it is a way to resolve those disputes — but only those disputes — that the parties have agreed to submit to arbitration," *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995), and "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit," *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648 (1986). Accordingly, "'whether or not [a party is] bound to arbitrate . . . is a matter to be determined by the Court on the basis of the contract entered into by the parties.'" *Id*. at 649 (quoting *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 547 (1964)). The Federal Arbitration Act "makes arbitration agreements enforceable to the same extent as other contracts." *Harris v. Green Tree Financial Corp.*, 183 F.3d 173, 178 (3d Cir. 1999).

Where the validity of an arbitration agreement is disputed, a court evaluates the agreement under state contract law. *See Spinetti v. Service Corp. Int'l*, 324 F.3d 212, 214, 219 (3d Cir. 2003); *Blair v. Scott Specialty Cases*, 283 F.3d 595, 603 (3d Cir. 2002). As the parties recognize, Pennsylvania contract law applies in this case.

Under Pennsylvania law, a court looks to three criteria to determine whether a valid contract has been formed: "(1) whether both parties manifested an intention to be bound by the agreement; (2) whether the terms of the agreement are sufficiently definite to be enforced; and (3) whether there was consideration." *Id*. (quoting *ATACS Corp. v. Trans World Commc'ns, Inc.*, 155 F.3d 659, 666 (3d Cir. 1998)). And, "'in determining whether

parties have agreed to arbitrate, courts should apply the rules of contractual construction, adopting an interpretation that gives paramount importance to the intent of the parties and ascribes the most reasonable, probable, and natural conduct to the parties.'" *Quiles v. Financial Exchange Co.*, 879 A.2d 281, 287 (Pa. Super. Ct. 2005) (quoting *Highmark Inc. v. Hosp. Serv. Ass'n of Northeastern Pa.*, 785 A.2d 93 (Pa Super. Ct. 2001)).

Pennsylvania courts have held that, under certain circumstances, the distribution of an employee handbook containing a mandatory arbitration policy can result in an enforceable arbitration agreement. If the handbook announces the employer's intention to be bound by the arbitration policy, and if an employee has notice of the policy and chooses to continue on in his or her employment, the handbook constitutes an "offer" and the employee's choosing to continue the employment constitutes both "acceptance" and "consideration." *See Gutman v. Baldwin Corp.*, No. 02-7971, 2002 WL 32107938, at *3-4 (E.D. Pa. Nov. 22, 2002) (applying Pennsylvania law); *Morosetti v. La. Land & Exploration Co.*, 564 A.2d 151, 152-53 (Pa. 1989) ("A handbook distributed to employees as an inducement for employment may be an offer and its acceptance a contract."); *Darlington v. General Electric*, 504 A.2d 306, 320 (Pa. Super. Ct. 1986) ("Provisions in a handbook or manual can constitute a unilateral offer of employment which the employee accepts by the continuing performance of his or her duties."); *Martin v. Capital Cities Media, Inc.*, 511 A.2d 830, 841-42 (Pa. Super. Ct.1986) ("[T]o find that . . . a handbook has legally binding contractual significance, the handbook or an oral representation about

the handbook must in some way clearly state that it is to have such effect.").

As in the formation of any contract, "there must be an intended, definite, specific offer before any offer can be accepted or any enforceable contract created." *Morosetti*, 564 A.2d at 153. Further, "the acceptance of the offer must be absolute and identical with the terms of the offer." *Quiles*, 879 A.2d at 285 (quoting *Hedden v. Lupinsky*, 176 A.2d 406, 408 (1962)); *see also Kirleis v. Dickie, McCamey & Chicolte, PC*, No. 06-1495, 2007 WL 2142397, at *7 (W.D. Pa. July 24, 2007) ("An argument that plaintiff 'must have known' or 'should have asked' falls short of the standard required by Pennsylvania law that plaintiff *actually agree* to arbitrate her claims."). In *Morosetti*, the Pennsylvania Supreme Court held that a severance pay policy contained in a handbook did not give rise to contractual rights in the employees because the policy existed only in an "uncommunicated personnel manual" and had never been offered to the employees. *See Morosetti*, 564 A.2d at 153.

Quiles v. Financial Exchange Co. recently reemphasized that an enforceable agreement arises out of an employee manual only where there is "a meeting of the minds" consisting of "an offer on one side and an unconditional acceptance on the other." *Quiles*, 879 A.2d at 285 (quoting *Cohn v. Penn Beverage Co.*, 169 A. 768, 768-69 (Pa. 1934)). In *Quiles*, an employee signed a form acknowledging receipt of the employee handbook, which contained a mandatory arbitration policy. The form she signed recited that the employee had received, read, and understood the handbook, including its arbitration

policy. *Id*. at 283-84. The trial court credited the employee's testimony that, although she signed the form, she never received a copy of the handbook. *Id*. at 284. The court also found that the woman "had difficulty with the English language, had never competed high school and was unfamiliar with the term 'arbitration.'" *Id*. The trial court denied the employer's request to compel arbitration because, under the circumstances, "there was no 'meeting of the minds on any of the handbook terms, including the arbitration procedure.'" *Id*. Affirming the trial court, the Superior Court held that, "without first having been given a copy of the Handbook, the only document that detailed and explained DRP and the company's proposed arbitration process," "Quiles could not accept the terms of the agreement to arbitrate." *Id*. at 288. And, "[w]ithout her acceptance, there was no contract formed between the parties and, thus, no grounds to compel arbitration." *Id*. The court distinguished the facts from cases in which "a party's failure to *read* a contract will not justify nullification or avoidance of the bargained for agreement" on the ground that, "without a copy of the Handbook, Quiles was not even given the opportunity to tread the terms of the arbitration agreement." *Id*. at 286.

In the post-trial briefing, plaintiffs contend that, for two reasons, no enforceable arbitration agreements exist. First, they contend, the handbook itself does not contain a definite statement announcing the Squad's intent to be bound; rather, the handbook's introduction calls the handbook "guidelines" changeable without notice — a level of uncertainty reflected in the testimony regarding shifting Squad policy and the lack of

enforcement of certain policies in the handbook. Second, plaintiffs contend that the arbitration policy was never unambiguously offered to the Plebanis, because they were not provided with handbooks upon commencing their employment and were not required to sign the form agreeing to the arbitration policy. Pl.'s Prop. Find. Fact & Law 2-11 (Docket No. 26).

The Squad responds that the arbitration policy's terms are sufficiently clear to be enforced, and that "both Plebanis had every reason to know [of] the existence of the arbitration policy and if they did not know, that lack of knowledge is due to their own ineptitude or negligence and therefore, according to *Quiles*, [is] not a defense to the employer's demand for arbitration." Def's Post-Trial Br. 7-8, 12-13 (Docket No. 28).

Under the circumstances, the court cannot find that an enforceable arbitration agreement exists between the Squad and either Michael or Lisa Plebani. No one at the Squad gave either of the Plebanis an employee orientation regarding the handbook or its policies, and the Plebanis were not asked to sign the forms acknowledging receipt of the handbook and agreeing to its arbitration policy. The handbook's introduction gives no indication that, contained within, is an offer to enter into a unilateral contract to waive certain rights; the introduction does not mention the arbitration policy and states that the handbook contains "guidelines" subject to change without notice. Thus, if the Plebanis were to be regarded as (a) having received notice of the arbitration policy's terms, and (b) having accepted them by continuing their employment, it would be because the record

supported a finding that the Plebanis, on their own, turned to page six and read the policy. The court credits the Plebanis' testimony that neither of them ever read the policy. Therefore, ignorant of the policy's terms, their continued employment did not actually constitute acceptance of the offer; there was no "meeting of the minds" consisting of "an offer on one side and an unconditional acceptance on the other"; and there is therefore no enforceable agreement. *See Quiles*, 879 A.2d at 285 (quoting *Cohn*, 169 A. at 768-69).

The Squad cannot succeed with the argument that the Plebanis are bound by the arbitration agreement because, under the law of contract, parties are held to contracts whether or not they have read them. That rule applies where a party signs a contract. *See Patriot Comm'l Leasing Co. v. Kremer Rest. Enters.*, 915 A.2d 647, 651 (Pa. Super. Ct. 2006). Here, there is no signed agreement.

There is greater force to the Squad's broader objection that the Plebanis were on notice of, and should be held to, all of the handbook's terms, because the Plebanis themselves distributed the handbook, were responsible for its enforcement, and may even have distributed or signed (as a supervisor) another employee's arbitration agreement form. However, as discussed above, "that plaintiff 'must have known' or 'should have asked' falls short of the standard required by Pennsylvania law that plaintiff *actually agree* to arbitrate her claims." *Kirleis*, 2007 WL 2142397, at *7 (emphasis in original).

Furthermore, the court is not convinced that the Plebanis *should* have been on notice of the arbitration policy: The circumstances under which the Plebanis received the

handbook rendered its terms incapable of being the requisite "intentional, definite" offer. *See Quiles*, 879 A.2d at 286 (quoting *Morosetti*, 564 A.2d at 152). The Plebanis both assumed their administrative positions at the Squad during a time when the previous operations manager had already left, and neither of them was instructed regarding the handbook's contents. Indeed, it was they who cobbled the handbook together from two different documents, the 1990s original and the 2001 insert, and photocopied it for distribution to employees. The 1990s document was superseded in part by the 2001 insert: The inserted pages literally took the place of page 31, and page 32[13] was altered with a pen or pencil in accordance with the inserted pages — although it was still slightly inconsistent with the insert. The four inserted pages concern the practical, day-to-day portions of the handbook with which Lisa Plebani dealt most frequently in her role scheduling Squad shifts and accounting for leave time. Meanwhile, Michael Plebani referred primarily to the "standards of conduct" — although he frequently consulted the Squad's labor lawyer for advice regarding discipline due to his uncertainty stemming from the union organizing campaign. It is undisputed that an entire subsection of the handbook that would have been relevant to the Plebanis' managerial duties — performance and compensation reviews — was not being followed. Michael Plebani, shortly upon his arrival, created a new disciplinary system, and the handbook was not, apparently, updated accordingly. The Squad has produced only a single arbitration policy acknowledgment form signed during

[13] With respect to "page 32," see footnote 8 and the accompanying text.

the Plebanis' tenure, despite the fact that there were evidently quite a few new employees oriented during that time — a sufficient number for Lisa Plebani to describe her orientation practices as a matter of routine.[14] Under these circumstances, where an arbitration policy was embedded in a document of inconsistent currency, the policy's mere presence in the handbook could not constitute an "intentional, definite" offer by the Squad to the Plebanis.[15]

III.

For the reasons given above, the court finds that no enforceable arbitration agreement exists between defendant and either of the plaintiffs. An appropriate order follows.

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[14] The court did not hear testimony concerning the precise number of new employees who joined the Squad during the Plebanis' tenure.

[15] The court finds irrelevant the Squad's further contention that "arbitration of disputes, . . . in the context of an emergency medical services company, furthers a valuable public policy," namely alleviating emergency medical services of the burden of "[t]he costs of employment discrimination litigation." Def's Post-Trial Br. 13-15. In support, the Squad cites *Bauer v. Pottsville Area Emergency Medical Services, Inc.*, 758 A.2d 1265 (Pa. Super. Ct. 2001)). *Bauer* discussed the "wide flexibility in the operative arrangement of the employment relationship in the emergency medical services context" in holding an emergency medical services organization to the terms of its employee handbook, which stated that employees who worked at least 36 hours per week for ninety days would receive the benefits given to full-time employees. *See id.* at 1269-70. *Bauer* does not suggest, however, that such organizations' need for flexibility — or need to save litigation costs — should trump one of the fundamental principles of contract law on which Pennsylvania courts have founded their decisions in this area: that an arbitration agreement in a handbook will be enforced only where an "employee has expressly agreed to abide by the terms of that agreement." *Quiles*, 879 A.2d 285.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA PLEBANI, Plaintiff v. BUCKS COUNTY RESCUE EMERGENCY MEDICAL SERVICES, Defendant	CIVIL ACTION No. 03-5816

MICHAEL PLEBANI, Plaintiff v. BUCKS COUNTY RESCUE EMERGENCY MEDICAL SERVICES, Defendant	CIVIL ACTION No. 03-6225

ORDER

AND NOW, this 27th day of November, 2007, the court finding, for the reasons given in the accompanying opinion, that no enforceable arbitration agreement exists

between the parties, **IT IS ORDERED** that the stay imposed pending this determination is lifted. *See* Docket No. 20. The case is referred back to Magistrate Judge M. Faith Angell for pretrial management.

/s/ Louis H. Pollak
_____
Pollak, J.